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No. 86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1985

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO;
COURT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

On Appeal from the Court of Appeal
of the State of California

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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Appellant in pro se

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ARGUMENT

Appellant Rodney F. Stich opposes appellees' motion to dismiss or affirm, and addresses the many errors of fact and errors of law in appellee's brief.

I. APPELLEE FALSELY ARGUES THAT APPELLANT HAD NOT RAISED THE ISSUE IN STATE COURT OF THE UNCONSTITUTIONAL INTERPRETATION AND APPLICATION OF STATE LAW.

Appellee seeks to have this action dismissed on the argument that appellant had not raised the issue of the unconstitutional interpretation and application of state law in his state court briefs. Appellant repeatedly raised this issue, repeatedly requested statement of decisions to address the unconstitutional interpretation and application of state law. These unconstitutional interpretation and applications included, inter alia:

a. California Law, When Constitutionally Interpreted and Applied, Prohibit Denying Residence As A Base For Personal Jurisdiction.

California law specifies residence as a base for personal jurisdiction. The California courts repeatedly held that they would not recognize divorce judgments rendered by jurisdictions foreign to California that were based only on residence, without a determination of domicile. This bizarre holding flies in the face of the massive numbers of California law, court practice, federal court holdings, that prohibits that same holding, including, inter alia: (a) California Code of Civil Procedure Sections 410.10 (jurisdiction acquired on any basis not inconsistent with the Constitution, known as California's long arm jurisdiction statute.); (b) Code of Civil Procedure §

1713.5(a)((2)(3) (jurisdiction acquired on the basis the person voluntarily appeared and agreed prior to the start of the action to the court's jurisdiction); (c) Code of Civil Procedure § 1713.5(b) (the courts may recognize other bases of jurisdiction); (d) Code of Civil Procedure § 418.10(a) (jurisdiction automatically acquired if not objected to within a limited time after service of process); (e) Code of Civil Procedure § 430.80(a) (objection to jurisdiction waived by failure to object to the personal jurisdiction of the 1966 divorce court); Evidence Code § 666 (requires conclusive presumption that the prior court acted within its lawful exercise of jurisdiction); Civil Code §§ 4530 and 4531 provides for residence as a recognized base for personal jurisdiction, prohibiting the California courts from voiding judgments rendered by other courts, over residents of the other

court's jurisdiction, on the holding it would not recognize residence as a basis for personal jurisdiction.

California decisional law, including Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210; Scott v. Scott (1958) 51 C.2d 249; Whealton v. Whealton (1967) 67 C.2d 656.

b. The California Courts Unconstitutionally Sought Authority in the California Family Law Act.

The California courts unconstitutionally interpreted the California Family Law Act, including (aa) Civil Code §§ 4530, 4531 (which require a "proceeding" for authority, personal and subject matter jurisdiction); (bb) California Rule of Court 1201(c) (which limits the authority and jurisdiction under the Family Law Act solely to "proceedings ... for dissolution of marriage, for nullity of marriage, or for legal separation of the parties); (cc) California Rule of

Court rules 1211 and 1207 prohibit either party from asserting "against the other party ... any cause of action or claim for relief other than for the relief provided in these rules or the Family Law Act."

c. California Law Protects Parties While In A Protected Special Appearance Status.

Appellant was in a protected special appearance status from the February 17, 1983 filing of the motion to quash, until January 14, 1986, during which appellant's personal and property rights were taken, with great irreparable harm. California Civil Code §§ 4356 provides for a protected special appearance following the raising of an objection to the California court's personal jurisdiction.

Appellee argues that the protection of a motion to quash does not accrue to

appellant (p.13), as the protection of California Civil Code Section 4356 was not enacted until 1984. That statute was originally enacted in 1970, suspended, and reinstated. Concurrent protection was provided by, inter alia, California Rule of Court 1232(a), as does federal and state decisional law. Rule 1232 states: "A defense which is raised by a motion to quash pursuant to Rule 1230 is not waived by later filing a response." Appellant immediately objected to the jurisdiction of the California courts in his first response to the petition for dissolution of marriage, and then followed with a motion to quash. The California court accepted the filing of the motion to quash, and rendered a decision on the motion--three years later, on January 13, 1986. Irregardless of that motion to quash, the California trial court lacked subject matter jurisdiction under the California Family Law Act to collaterally

attack the 1966 divorce judgment, appellant's personal and property rights, rescind the due process right to invoke court jurisdiction on the universally recognized basis of residence, and substitute the illegal and unconstitutional domicile invalidating argument.

d. Orders To Pay Attorney Fees, Costs, and Temporary Spousal Support, Were Without Jurisdiction.

Orders for attorney fees and costs, and temporary spousal support obtain authority in "proceedings" under the Family Law Act, and as specifically provided by the authority of Civil Code § 4357 and 4370. A "proceeding" is defined by California Rule of Court 1201(c) as a "proceeding" to terminate a marriage, a nullity of marriage, or legal separation. As a matter of law, there was no marriage to terminate, and the prior divorce judgment removed the statutory

requirement for subject matter jurisdiction.

e. A Prior Divorce Judgment Is A Final Adjudication Of The Rights And Obligations Of the Parties.

The final adjudication of the rights and obligations of the parties is provided by law: (aa) Civil Code § 4554 provides for the final adjudication of the rights and obligations of the parties following the rendering of a divorce judgment, as was provided by law of the 1966 court forum and stated in the divorce judgment recitals. This protection was and is extended to foreign country judgments by, inter alia, Code of Civil Procedure § 1915; Code of Civil Procedure § 1908 (conclusiveness and effect of judgment); Code of Civil Procedure § 1913 (Conclusiveness of judgment of sister state--including the judicial registration of the 1966 judgment); Code of Civil Procedure § 1914

(international comity judgment public policy includes this statute addressing the effect of a foreign country judgment as being the same as if it were the record of a court of admiralty of the United States); Code of Civil Procedure § 1915 (in effect when the 1966 judgment was rendered, and for nine years thereafter, requires recognition as a final judgment of California); California Code of Civil Procedure § 1699 (upon registration the judgment must be treated in the same manner as a judgment rendered by California courts);

f. The Registration of the 1966 Judgment In California Courts, and Courts Throughout the United States, Are Public Acts Requiring Full Faith and Credit Recognition.

Civil Code § 5004 and Code of Civil Procedure 1913 statutorily implements the protection of the Full Faith and Credit

Clause of the United States Constitution, requiring recognition of the public acts of other courts and jurisdictions within the United States, including the registration and confirmation of the 1966 judgment in the Superior Court, Contra Costa County, State of California; and the registration in jurisdictions of Nevada, Colorado, Oklahoma, and Texas. California statutes, including Code of Civil Procedure § 1915, required that foreign country judgments be recognized as local judgments, invoking the protection of Civil Code § 4554.

g. The California Courts Unconstitutionally Punished Appellant For Exercising Fundamental Appellate Remedies.

The California court held in its published decision, In re Marriage of Smith (1985) 167 Cal.App.3d 226, that appellant's exercise of procedural due process remedies, as specifically

process remedies, as specifically provided by California law, were frivolous acts. The published decision unconstitutionally applied California Code of Civil Procedure § 907 and California Rule of Court 26(a) as punishment for exercising this fundamental constitutional right. The published decision held that appellant should have willingly submitted to voiding of his personal and property rights and the massive violation of his protection in state, federal and constitutional law. From such holding appellant was subsequently ordered to go to jail for five days, and then subjected to a bench warrant for his arrest, which is still pending. Appellant was ordered to pay sanctions, attorney fees, costs, and other orders totaling approximately $50,000, on the holding that it was frivolous for appellant to (a) file a motion to quash (which was specifically

provided by California Rule of Court 1230(a)(2) when there exists a prior judgment, and Code of Civil of Civil Procedure § 418.10(a)(1); filing a petition for writ of prohibition, as provided by Code of Civil Procedure § 418.10(c), precipitated by the massive violations and unconstitutional interpretation and application of judgment recognition law and other relevant statutes; and appellant's appeal, as authorized by Code of Civil Procedure §§ 902 and 904.1, which was brought about by the massive violations and unconstitutional interpretation and application of state law. These massive takings of personal liberties arose from the California court's refusal to recognize residence as a base for personal jurisdiction.

II. APPELLEE FALSELY ARGUES THAT THE 1966 DIVORCE PROCEEDING WAS EX PARTE.

Appellee falsely states that the 1966

divorce judgment was an ex parte proceeding, (p.18), when the facts clearly show otherwise. The divorce judgment recitals stated that appellant's former wife was personally served; that she signed notarized divorce documents submitting herself to the court's personal jurisdiction; appeared via legal counsel; accepted the benefits of the divorce proceedings and divorce judgment; and admitted in declarations and testimony to signing the divorce documents. or arguendo, if the 1966 divorce proceedings had been ex parte, the dissolution of marriage would be res judicata, and the former wife's remedies would be filing a timely action in her State of Texas for whatever money rights to which she might have been entitled 21 years ago, under the laws of her state of residence. (Vanderbilt v. Vanderbilt (1957) 354 U.S. 416, upholding ex parte divorce judgments). Further, the matter

of the prior court's proceedings are res judicata, and not subject to relitigation 21 years later.

III. Appellee Seeks Support In 52 Year Old Law That Had Been Knowingly Superseded and Held Illegal And Unconstitutional For the Past Forty Years.

Appellee seeks support in the 52 year old holding of Ryder v. Ryder (1934) 2 Cal.App.2d 426, 420, arguing that only the principles of comity applies to protect persons holding foreign divorce judgments rendered while they resided in such foreign jurisdictions. Concurrently, appellee then holds that residence will not be recognized as a base for personal jurisdiction, holding that personal and property rights of these millions of persons can be voided at will by California courts. Appellee was fully aware that the lower court ruling of Ryder was specifically overruled in Scott

v. Scott (1958) 51 C.2d 249, as the California Supreme Court held: "Ryder v. Ryder ... These cases should be disapproved insofar as they make domicile a sine qua non of recognition." The Ryder case was overruled by landmark federal decisions, including Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969); Sherrer v. Sherrer (1948) 334 U.S. 343; Coe v. Coe (1948) 334 U.S. 378; Vanderbilt v. Vanderbilt (1957) 354 U.S. 416.

IV. THE CALIFORNIA FAMILY LAW ACT PROVIDES NO AUTHORITY FOR COLLATERAL ATTACKS.

There is no authority in the California Family Law Act to collaterally attack a prior judgment, to substitute domicile for residence, or any other claim other than that provided by Rule of Court 1201(c). The California Family Law Act specifically limits authority and jurisdiction to "proceedings," as defined and limited in Rule of Court 1201(c).

California Rule of Court 1211 and 1207 prevents the other party from asserting "any cause of action or claim for relief other than the relief provided in these rules of the Family Law Act." Rule 1201(c) sets these limits.

V. APPELLEE SEEKS SUPPORT FROM THE VERY DECISION THAT REMOVED RIGHT TO DIVORCE FROM THE KEYHOLE STAGE.

Appellee argues (p.18) that Sherrer v. Sherrer (1948) 334 U.S. 343, does not protect appellant from relitigating the personal jurisdiction of a prior court, arguing that it only applied the protection of Full Faith and Credit. Sherrer prohibited collateral attacks on prior divorce judgments on several bases, one of which was Full Faith and Credit. Res judicata was another basis on which the Sherrer court prohibited collateral attacks. The court did not hold that due process and equal protection of the law

only applied to United States citizens obtaining judgments in sister states. The subsequent landmark case of Perrin v. Perrin, 408 F.2d 107 (3rd Cir. 1969) clarified the right to obtain a divorce in a foreign country and for its recognition by all state courts.

CONCLUSION

The massive numbers of bizarre, illegal and unconstitutional holdings of the California courts, as partly articulated by appellee, are a shocking indictment upon the status of constitutional rights in California courts.

Issues of national importance are implicated in the published decision of the California Court of Appeal. Millions of divorced persons are threatened by that published decision, which is now decisional law of the State of California, and within the jurisdiction of this Court to remedy. The bizarre

holding that residence is not a recognizable base for personal jurisdiction was compounded by, inter alia, the holding that a court foreign to California loses jurisdiction in a divorce action if the former wife later--21 years later, claims she was distraught!

Dated: October 30, 1986.

Respectfully
Submitted,

_____

Rodney F. Stich
Appellant in pro se

DECLARATION OF SERVICE BY MAIL

I, Kita Browne, declare under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I served by mail this Opposition to Dismiss or Affirm, on November 1, 1986, enclosing a true copy of said document in an envelope, addressed as follows:

County Counsel, Solano County
Hall of Justice Building
Fairfield, California 94533

Friedman, Sloan and Ross
407 Sansome Street, Suite 400
San Francisco, Calif. 94511

Executed on November 1, 1986 at Reno, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

_____
Kita Browne